

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2183/2005 & CRL.M.C. 2184/2005

Date of decision : April 25, 2007

ARUN GUPTA & ANR.

.....Petitioner

Through: Mr. Imran Ahmad Abbasi, Advocate

versus

STATE

..... Respondents

Through Mr. R.K.Kapoor, Mr. Govind Kaushik,
Advocates for complainant.

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. Whether reporters of local papers may be allowed to see the judgment.? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Mr.Justice S. Ravindra Bhat : (Open Court)

1. In this petition the relief claimed is for quashing of criminal proceedings arising from a first information report (FIR) registered on 25.8.2004 alleging commission of offences under Sections 120B/406/409/420/467/468/471/477A IPC, by the petitioner-accused.
2. The facts are briefly that during April, 2002, the complainant (one

N.S.Hoon) was approached by Sh. Sunil Singhanian, an agent of M/s. O.J. Financial Services Ltd., owned by the petitioners. Shri Singhanian persuaded the complainant to invest funds and shares with the petitioners, i.e. Gupta brothers assuring to pay 18% interest per annum in order to maximize the yield on his investment subject to a minimum investment of Rs. 1.00 Crore per year. The complainant was also allegedly assured payment of further additional incentives on extra income.

3. With a view to ensure the investment in a proper manner, the complainant visited the offices of M/s O.J. Financial Services Ltd. Persuaded by the big fleet of working staff and apparently progressive investment report of M/s. O.J. Financial Services Ltd., he decided to invest his hard-earned money in share market schemes of the petitioners in April, 2002, in order to secure a fixed interest amount as returns on his total investment, on monthly basis. It was mutually agreed that interest on shares would be calculated on the basis of fluctuating market rates. All the actions for utilization of funds provided to M/s. O.J. Financial Services Ltd. were to be performed by them, in respect of shares of the complainant.
4. The complainant not only invested his money but also due to the petitioners' persuasion, motivated one of his acquaintances, Mrs. Meera Ahuja also invested amounts in M/s. O.J. Financial Services Ltd. On the petitioners'

recommendation, the complainant invested Rs. 30 lakhs through pay Order at the agreed interest of 1.5% p.m. and Mrs. Ahuja deposited an amount of Rs.7.5 lakhs in April, 2002 with M/s. O.J.Financial Services Ltd. The complainant alleged that without intimating any tenable reason or justification, the Gupta brothers (i.e. petitioners) discontinued the monthly payment of Rs. 45,000/- made on account of interest w.e.f. October, 2003 and did not honour the commitment made to him. Similarly, the company did not pay interest amount of Rs.11,000/- to Mrs. Meera Ahuja from the month of November, 2003.

5. It was further alleged that two cheques amounting to Rs. 7.5 lakhs (for the return of principal amount) and Rs. 11,000/- as the monthly interest of November, 2003 (drawn upon M/s Ganpati Securities) given by Shri Sunil Singhanian to Mrs. Meera Ahuja were dishonoured. On enquiring the position, the owner of company failed to give proper reply for non-payment of interest amount. Since the response of the owner of Company was not satisfactory, no option was left for the complainant to sue against the said company. According to complainant, Shri Sunil Singhanian (the middle man), Shri Arun Gupta and Naveen Gupta, the petitioners, in furtherance of a criminal conspiracy, dishonestly and fraudulently induced him through misrepresentation, false assurances, and forgeries of various documents including documents akin to valuable securities like agreements and delivery instructions etc. to cheat him

and misappropriate his amount and shares.

6. It was alleged that during investigation the allegation about payment of Rs. 1,39,50,000/- by complainant through 10 cheques was established. It was also alleged that the complainant's brother paid Rs. 30 lakhs through a pay order and Ms. Meera Ahuja paid Rs. 10 lakhs through a cheque in favour of M/s O.J.Financial Services Limited. A statement revealed that the complainant had received amounts in excess of Rs. 6 lakhs in 8 instalments from M/s. O.J.Financial Services Limited for about 6 months by cheques; likewise Ms. Meera Ahuja received Rs. 2,40,000/- in 8 instalments. According to the investigation, M/s O.J.Financial Services was also furnished with shares amounting to Rs. 1.11 crore of various companies. After investigation, a charge-sheet was filed.
7. Mr. Vinay Garg submits that there is nothing on record to show that Sunil Singhanian had any relationship with the petitioners. Further there is no shred of documentary or other evidence to substantiate the plea that the petitioners deposited cash or shares in lieu of payment of interest. It was submitted that valuation of the shares on the basis of fluctuations in the market could never be a fixed one and therefore question of paying fixed monthly interest or amounts, as alleged was a figment of the imagination of the complainant. Counsel submitted that shares have 4 different rates on any single day. Therefore the

entire version of depositing shares to enable the complainant, to obtain a fixed income is utterly implausible or impracticable.

8. Counsel urged that the transaction whereby the shares were handed over, was in furtherance of a legitimate agreement under which the petitioners as brokers, were mandated to sell them. Heavy reliance was placed upon certain documents said to have been executed by the complainant, i.e. Member Client Agreement, Risk Disclosure Agreement, Sub-broker-Client Agreement dated 1.5.2002 and a letter dated 29.4.2002 issued by the complainant. Additionally counsel placed reliance on a letter dated 20.10.2003 allegedly issued by the complainant, evidencing receipt of contract notes for the transaction of share transfer etc. It was submitted that all these showed that shares were received in the normal course of business, in commercial transactions and the shares were not meant to be kept as security or use for the purpose of ensuring monthly payments. At any rate no such arrangement existed in writing.
9. Learned counsel contended that the reality of the entire transaction between the parties was that the complainant wished to hand over securities and engage in share trading. This is evidenced by his willing execution of various commercial documents. In case he had any difficulty in recovering the amounts the proper and legal course for him would have been to institute civil action or file recovery suits and not lend a criminal clock to the transaction and lodge a first

information report. Learned counsel contended that even though the prosecution filed a charge sheet it is still open to this court to assess all the materials and if satisfied that relief is justified, proceed and quash the FIR under Section 482 Cr. P.C. He relied upon the judgment reported as *M.L.Bhatt Vs. M.K.Pandita and Ors. , JT 2002 (3 SC) 89.*

10.I have considered the submissions on behalf of the parties as also the first information report and the charge sheet filed.

11.The parameters of jurisdiction of a High Court under Section 482 of the Criminal Procedure Code are well-defined. The court can invoke it and quash criminal proceedings (including the first information report) if such FIR or complaint, read as a whole does not disclose the commission of any offence or offences alleged. Further, the court can also quash the proceedings if it is satisfied that they were initiated due to *mala fides* or that if all allegations are assumed to be true, no offence can be made out; or that the allegations are so inherently improbable so as to be discarded.

12.In this case, the complainant alleged that substantial amounts were paid to the petitioners. This apparently is based on documentary evidence and also appears to have been accounted for in the books available with the petitioners. In addition the complainant and the other investors who had followed his example, were paid monthly amounts for some time before such payments were

discontinued. The cheques issued to one of the investors were not honoured. The petitioners, apparently failed to repay the principal amounts. Their justification is that the amounts and the shares received were towards share transactions – they rely on a number of documents. Some of these documents are alleged to be forged. The police conducted an extensive investigation and sought the expertise of auditors whose report is part of the charge sheet.

13. All the above materials in my considered opinion do not square up to any permissible ground on which this court can exercise its jurisdiction under Section 482. It certainly cannot be said that the FIR taken as a whole or that even if all its contents are assumed to be true, do not disclose commission of any offence. The points raised by the petitioners may be valid and can be certainly urged in the course of further proceedings, in the defence. Yet they are disputed questions of fact. The investigations resulted in a charge sheet. In these circumstances, it would be unsafe for the court to conclude that no materials exist indicating the offence. Whether the materials and evidence collected are sufficient or otherwise to frame a charge and whether they constitute legal

evidence is a matter which would be appropriately gone into by the trial court;
this court cannot pre-judge that exercise and comment on it.

14. In view of the above conclusions I am satisfied that the relief claimed cannot be granted. All rights and contentions of the petitioners available in law, are hereby reserved; nothing mentioned in this order shall be construed as an expression on any of the merits of the case.

15. The petitions therefore fail and are dismissed.

(S.RAVINDRA BHAT)
JUDGE

APRIL 25th, 2007
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